

**DISCHARGE FOR A POSITIVE ALCOHOL TEST**  
**ON OR AFTER 01-01-05**

Missouri Employment Security Law, Section 288.045, calls for cancellation of part or all the wage credits earned with an employer, if the claimant was discharged on or after 01-01-05 because of testing positive at a level of .08 percent or above for alcohol while at work. [REDACTED]  
[REDACTED] Division policy is to cancel all wage credits earned with the discharging employer. [REDACTED]  
[REDACTED]

If a person was at work, apparently intoxicated, but was not tested, section 288.045 does not apply, even if the claimant admitted to drinking on the job or before work. If the person was tested but the result was below .08 percent alcohol, Section 288.045 does not apply. Misconduct could be found in both of these circumstances under Employment Security law, Section 288.050.

Regular Employment Security law for misconduct under Section 288.050, rather than 288.045, can be used if there are sufficient facts to establish misconduct but the employer is unable to supply required documentation, such as the breathalyzer technician's certificate.

When testing for alcohol, the DOT standard allows only saliva or breath for screening tests and only breath for confirmation tests using approved devices. DOT does not accept blood or urine. If urine or blood is used for testing, it is possible to get to misconduct but the ruling would have to be under Section 288.050.

An example of how to write an [REDACTED] determination is: "The claimant was discharged because he tested positive for alcohol. The test was conducted in accordance with the employer's alcohol free workplace policy and Employment Security Law, Section 288.045. Wage credits are cancelled from 01-01-03 through 01-25-05."

**QUESTIONS TO ASK CLAIMANT**

- Why were you tested for alcohol?
- What were your job duties?
- Does the employer have an alcohol policy?
- What is the policy?
- Were you informed of the alcohol testing policy prior to testing? If so, when and how?
- Does the policy state a positive test result is considered misconduct and may result in suspension or termination of employment?
- Are you a member of a union with a CBA governing alcohol testing?
- Were you given a breathalyzer test? If not, how were you tested?
- Where was the alcohol test given?
- Were you sent from work to take the breathalyzer test?
- What was the date of the alcohol test?
- What was the date of your discharge?

- Describe the process of obtaining the sample?
- What was the result of the test (alcohol percent)?
- Did you consume alcohol prior to work or at work on the day of the incident?
- If not, do you know why you tested positive?

Obtain specific details. If the claimant admits to having a few beers several hours before work, find out the time he or she stopped drinking and how many beers were consumed. If the claimant says the test was positive because of taking Nyquil, find out how much Nyquil was consumed and the normal dosage.

### **QUESTIONS TO ASK THE EMPLOYER**

- Why was the claimant tested? Find out specifically why the claimant was suspected of being under the influence. Try to obtain specific details.
- What were the claimant's job duties?
- What is your alcohol policy?
- When and how was the claimant informed of the alcohol testing policy?
- When was it put into effect?
- Does the policy state a positive test result is considered misconduct and may result in suspension or termination of employment?
- Is the employee a member of a union with a CBA governing alcohol testing?
- What was the date of the alcohol test?
- What was the date of the discharge?
- Was the claimant sent from work to be tested? If not, when was the employee tested?
- Where was the test given?
- Was the test conducted per DOT procedures or in accordance with the CBA?
- What is the name of the technician who administered the breathalyzer test? Is the technician certified?
- What was the level(s) of the test results?
- If the claimant tested positive at a level below .08 percent alcohol, does your policy state that any detectable level of alcohol is prohibited?
- Did the claimant admit or deny alcohol use?

### **DOCUMENTS REQUIRED FROM THE EMPLOYER**

- A copy of the employer's alcohol testing policy or CBA, if applicable. It would be best to have a document with the claimant's signature acknowledging receiving/understanding the policy, particularly if the claimant denies having been informed of the policy.
- Copy of the test result.
- Copy of the breathalyzer technician's certificate. If a breathalyzer test was not given but instead a urine sample was taken, the same documentation is required that is needed for a positive drug test.